v. *Hosegood,* [1900] 2 Ch. 388. In the principal case, the devise of the covenantee's remaining estate to the plaintiff did not amount to an assignment of the benefit of the covenant under any of the tests previously considered. However, a assignee of land in connection with which restrictive covenants have been given can successfully enforce the covenants if he is also an assignee of the benefit of these covenants although their benefit has not been so definitely attached to the land as to pass by mere conveyance. *Renals* v. *Cowlishaw, supra.* The principal case holds that, since the benefit can be expressly assigned it can be assigned by operation of law and. since the covenantee could have restrained such a breach at the time of her death, as the beneficial owner of the property so retained, the same right may be exercised by those representing together both her real and personal estate. Where the executor represents the personal estate alone and the covenantee has retained none of the original estate, the former has no right of action for a breach occurring after the death of the latter. *Formby* v. *Barker,* [1903] 2 Ch. 539. Therefore, the plaintiffs in the principal case could have prevailed only in their dual capacity.

SALES—LIABILITY OF MANUFACTURER TO ONE NOT IN PRIVITY OF CONTRACT FOR INJURIOUS FOOD PRODUCTS.—The defendant packing company sold sausage to an intermediate retail dealer, who sold to the plaintiff, whose wife died from ptomaine poisoning alleged to have been caused from eating this sausage. The court, upon motion of the defendant, compelled the plaintiff to elect to proceed either upon the theory of implied warranty, or upon negligence, and he elected to stand upon negligence. Judgment below for the defendant, without submission to the jury on the ground that no negligence was shown. *Held,* that it was proper for the court to compel such election, and that while there might have been a recovery upon the basis of negligence, there could not be upon the basis of implied warranty, because there was no privity of contract. *Drury* v. *Armour & Co.,* (Ark., 1919) 216 S. W. 40.

It seems to be a well settled doctrine at the present time that the ultimate consumer may bring his action directly against the manufacturer or packer for injuries from the use of unwholesome food, though there was no contract relation between the parties. *Tomlinson* v. *Armour & Co.,* 75 N. J. L. 748; *Salmon* v. *Libby, McNeill & Libby,* 219 Ill. 421; *Roberts* v. *Annheuser Busch Brewing Assoc.,* 211 Mass. 449; *Wilson* v. *Ferguson Co.,* 214 Mass. 265; *Haley* v. *Swift & Co.,* 152 Wis. 570; *Ketterer* v. *Armour & Co.,* 200 Fed. 322; *Mazetti* v. *Armour & Co.,* 75 Wash. 622, 48 L. R. A. (N.S.) 213 (note); *Meshbesher* v. *Channellene Oil & Mfg. Co.,* 107 Minn. 104; *Watson* v. *Augusta Brewing Co.,* 124 Ga. 121. The only difficulty in the above rule is to ascertain upon what basis the action is predicated. As in the principal case, many courts have held that it cannot be based upon contract for the breach of an implied warranty, because there is no privity of contract between the consumer and the manufacturer, when a retailer intervenes. *Nelson* v. *Armour & Co.,* 76 Ark. 352; *Tomlinson* v. *Armour* & *Co., supra* (saying they will assume without deciding, that there is no implied warranty); *Roberts* v

Annheuser Busch Brewing Assoc., supra. Some courts have put it on the ground of the negligence of the manufacturer, implied from the violation of the pure food statute, under the general rule giving a private right of action against the wrongdoer for injuries sustained from a violation of the statute. *Salmon* v. *Libby, McNeill & Libby, supra; Meshbesher* v. *Channellene Oil & Mfg. Co., supra.* Others have placed the liability for furnishing defective provisions, which endanger human life, on the same ground as the manufacturing of patent or proprietary medicine. *Tomlinson* v. *Armour & Co., supra; Roberts* v. *Annheuser Busch Brewing Assoc., supra; Wilson* v. *Ferguson Co., supra; Haley* v. *Swift & Co., supra; Parks* v. *Pie Co.,* 93 Kan. 334; *Jackson Coca Cola Bottling Co.* v. *Chapman,* 106 Miss. 864; *Boyd* v. *Coca Cola Bottling Co.,* 132 Tenn. 23; *Liggett & Meyers Tobacco Co.* v. *Cannon,* 132 Tenn. 419. One court has rested the liability upon the principle that the original delivery of the article is wrongful and that everyone is responsible for the natural consequences of his wrongful acts. *Weiser* v. *Holzman,* 33 Wash. 87. In another case the Federal court said, "the remedies of the injured consumer ought not to be made to depend upon the intricacies of the law of sales. The obligation of the manufacturer should not be based alone upon privity of contract. It should rest upon the demands of social justice." *Ketterer* v. *Armour & Co.,* 200 Fed. 322. However one case supports the view of an implied warranty, which runs with the goods, and allows a recovery on that ground. *Mazetti* v. *Armour & Co., supra.* In that case the court said, "a manufacturer of food products under modern conditions impliedly warrants his goods, when dispensed in original packages, and that such warranty is available to all who may be damaged by their use in the legitimate channels of trade." The same argument was relied on in the dissenting opinion of the principal case, namely, that an implied warranty should run with the property. However the weight of authority numerically seems to be, that such recovery is based on the theory of negligence and not on breach of contract as contended for in *Mazetti* v. *Armour & Co., supra,* and in the dissenting opinion in the principal case. As to the liability of the retailer for implied warranty of provisions, see 17 MICH. L. REV. 192; and as to implied warranty of wholesomeness in general, see 16 MICH. L. REV. 555.

TORTS—RIGHT TO PRIVACY.—Plaintiff's name and picture were published in defendant's motion pictures as pictorial news. Picture was a truthful one taken while plaintiff was engaged in solving a famous murder mystery of extreme interest to the public and which had been featured together with plaintiff's aid in its solution by all the daily papers at the time. Suit is brought for alleged violation of the right to privacy under a New York statute prohibiting the use of a person's name or picture without consent in writing for advertising purposes or for the purposes of trade and giving the injured person a cause of action for injuries suffered and exemplary damages. *Held* that statute did not prohibit the publication of a picture or name without written consent in a set of films of actual events as a matter of current news. *Humiston* v. *Universal Film Co.,* (N. Y., 1919) 178 N. Y. S. 752.